

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

MANUEL GURROLA-MIRANDA,

Defendant.

Case No. 2:14-cr-00141-GMN-CWH

ORDER

This matter is before the court on Defendant Manuel Gurrola-Miranda's ("Defendant") Motion for Disclosure of Impeaching Evidence (#69), filed September 4, 2014, and the Government's Response (#70), filed September 11, 2014. On April 16, 2014, Defendant was charged by indictment with Conspiracy to Distribute Controlled Substance in violation of 21 U.S.C. §§ 841(a)(1), (b)(1)(A), and 846. Trial is currently scheduled to commence on October 20, 2014. (#66)

The case has not been designated complex for purposes of discovery. The standard order regarding pretrial procedure indicates that discovery disputes are governed by Local Rule Criminal Practice 16-1, which requires that before filing any motion for discovery that "the parties shall confer promptly to discuss the scope, timing, and method of the disclosures required under section 16-1(b)(1)(D)(i) and any additional disclosures upon which the parties agree." *See* Local Criminal Rule ("LCR") 16-1(b)(1)(B). The rule further requires that "[b]efore filing any motion for discovery, the moving party shall confer with opposing counsel in a good faith effort to resolve the discovery dispute. Any motion for discovery shall contain a statement of counsel for the moving party certifying that, after personal consultation with counsel for the opposing party, counsel has been unable to resolve the dispute without Court action." *See* LCR 16-1(c). Defendant's motion does not include the required certification.

Defendant's motion is a broad-ranging discovery motion seeking an order compelling

1 production under *Brady v. Maryland*, 373 U.S. 83 (1963) and its progeny. The motion requests
2 seven topics or categories of information regarding all of the witnesses to be called in this case, and
3 information regarding a confidential informant. Defendant's counsel indicates that he sent a letter
4 to the Government requesting the information regarding the confidential informant, but no response
5 was provided.

6 The Government indicates that it is aware of its obligations regarding the disclosure of
7 exculpatory and impeachment evidence and that it has and will comply with its responsibilities. It
8 further states that the specific requests go far beyond what is required and to that extent, the motion
9 is opposed. The Government specifically indicates that it does not intend to call the confidential
10 informant as a witness in the case and, therefore, has no duty to disclose impeachment evidence.
11 Finally, the Government indicates that it would exceed the requirements of *Brady* to require the
12 Government to describe, for each government witness, many of whom have many years of service,
13 each occasion of testimony before any court, grand jury, or other tribunal or body. In addition to
14 being beyond the scope of *Brady* and its progeny, such a requirement "would be nearly, if not
15 actually, impossible."

16 The Court has reviewed the motion and agrees that the identified categories of requested
17 information are general requests, much of which the Government concedes it is obligated to
18 provide under well known case law. Unfortunately, there is no indication that the required personal
19 consultation occurred before this motion was filed. The mere exchange of letters is not sufficient to
20 satisfy the requirement for personal consultation. Consequently, the Court is left with no particular
21 dispute to resolve, except in very general terms requiring the Government to comply with pretrial
22 discovery obligations of which it is already aware, and already imposed under LCR 16-
23 1(b)(1)(D)(i). Given the wide range of agreement from the Government as to much of the
24 information requested, much of the motion is moot. Nevertheless, the Court orders as follows:

25 **1. Credibility Information.** The Government shall disclose the criminal history reports of
26 testifying witnesses in response to request 1. The Government need not provide Defendant with
27 every possible document that may reflect impeachment information, as suggested in requests 2 and
28 7. The parties should, however, personally consult on the latter, as the record does not show what

1 specific impeachment information is sought. Defendant is not entitled to the copies of debriefings
2 of the confidential information unless they contain *Brady* material.

3 **2. Consideration.** Request 3 seeks information concerning promises of various types of
4 consideration given to witnesses, and request 4 seeks information of threats or coercion directed
5 against the witnesses. The Government must fully comply with its obligations to provide
6 Defendant with information reflecting consideration and leniency, including plea agreements or
7 immunity agreements, payments and other benefits, whether monetary or nonmonetary, provided to
8 or requested by any testifying witness in this case.

9 **3. Prior Testimony.** Requests 5 and 6 seek information on the existence and identification
10 of each occasion on which each witness, including those who have been an informer, accomplice,
11 co-conspirator, or expert, have previously testified before any court, grand jury, or other tribunal or
12 body. Defendant provides no argument as to why the requested information regarding prior
13 testimony would be helpful or relevant to the defense. The Government responds that fulfilling
14 such a request would be unduly burdensome because most of the witnesses are law enforcement
15 officers who, through their careers, have testified numerous times. The court agrees that such a
16 requirement exceeds *Brady* requirements, and would be of marginal relevance or assistance to the
17 defense.

18 **4. Informant identity.** Defendant requests various types of information concerning the
19 informant in connection with this case. He indicates that the informant met with agents and
20 provided information about Defendant, and that the informant apparently met with Defendant and
21 others on two occasions, but apparently did not witness any crimes. Defendant provides no
22 argument as to why the requested information regarding the confidential source who will not be a
23 witness in this case would be helpful or relevant to the defense.

24 The decision whether to compel disclosure of an informant requires a balancing of a
25 defendant's need for the information with the government's interest in protecting its sources. *See*
26 *Roviaro v. United States*, 353 U.S. 53, 62 (1957). Absent a showing of what the informant
27 observed or how it would be helpful to the defense, the defendant has not met his responsibility to
28 demonstrate the need for the disclosure. *United States v. Alexander*, 761 F.2d 1294, 1303 (9th Cir.

1 1985). The Court agrees with the Government that Defendant has not demonstrated that he is
2 entitled to the requested informant information.

3 Based on the foregoing and good cause appearing therefore,

4 **IT IS HEREBY ORDERED** that Defendant Manuel Gurrola-Miranda's Motion for
5 Disclosure of Impeaching Evidence (#69), is **granted in part and denied in part** as set forth
6 herein.

7 **IT IS FURTHER ORDERED** that to the extent additional information is sought that is
8 covered by this motion, Defendants shall initiate a meet and confer with Government counsel and
9 submit, not later than **October 2, 2014**, a joint motion specifically identifying the disputed
10 information requested and setting forth the parties respective positions regarding the disputed
11 information.

12 DATED: September 25, 2014.

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15 **C.W. Hoffman, Jr.**
16 **United States Magistrate Judge**
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